IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.4641 OF 1996

Bank of Maharashtra, a Banking Corporation constituted under the Banking Companies (Acquisition and transfer of Undertakings) Act, 1970, having its Head Office at `Lokmangal', 1501, Shivajinagar, Pune – 411 005, and one of its Branch Offices at `Neelkanth Krupa', R.B. Mehta Road, Ghatkopar (East), Mumbai – 400 077. ... Plaintiffs

Vs.

1. Satish Dattatraya Jadhav, an Indian Inhabitant, carrying on business under the firm name, style and as a sole proprietor of M/s. Inland Transport and residing at Building No.32, Room No.529, Ground Floor, Right Wing, Kannamwar Bagar I, Vikhroli (East), Mumbai – 400 083.
2. Bhavanidas Purushottamdas Parikh, an Indian Inhabitant, residing at 11-12, Alka Building, 107, Tilak Road, Ghatkopar (East), Mumbai – 400 077.

3. Shantilal Damaji Mehta, an Indian Inhabitant, residing at Dr. Damaji Sadan, Jethbhai Lane, Patel Chowk, Ghatkopar (East), Mumbai – 400 077.)
4. Dattatraya Keshav Jadhav, an Indian Inhabitant, residing at Village Pure Budruk, Taluka Khed, Dist. Ratnagiri.) ... Defendants

Mr. Avinash Thakar for the plaintiffs.

None for the defendants.

CORAM : SMT. RANJANA DESAI, J.

DATED : SEPTEMBER 20, 2007.

ORAL JUDGMENT:-

1. This suit is on my board under the caption "Undefended Suits for Ex-parte Decree".

2. The plaintiff-bank has filed this suit, inter alia, for a direction to the defendants to jointly and severally pay to the plaintiffs a sum of Rs.4,18,933/- due and payable under the loan account as per particulars of claim (Ex-I) to the plaint with interest thereon at the rate of 17.5% per annum with

quarterly rests from the date of filing of the suit till payment and/or realisation.

3. On behalf of the plaintiff, affidavit of evidence dated 13/9/2007 in lieu of examination-in-chief is filed by Mr. Kehav Trivikarm Thakar, the Chief Manager of the plaintiff. The said affidavit of evidence is on record and is marked as **Ex-A**. The plaintiff has also filed a list of original documents along with the original documents. The said list along with the original documents is marked as **Ex-B (Colly.)**.

4. The case of the plaintiff as disclosed in the plaint as well as the affidavit of evidence is that the plaintiff is a Banking Corporation constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, having its Head Office at Pune and one of the Branch offices at Ghatkopar (East), Mumbai. Defendant 1 is the principal debtor and carrying on business as Transport Operator in the firm name, style and as a sole proprietor of M/s. Inland Transport. Defendants 2 to 4 are sued as

Guarantors.

5. It is the case of the plaintiff that at the request of defendant 1, the plaintiff sanctioned to defendant 1 a loan of Rs.3,75,000/- for purchasing New Tata LPT 1210 on or about 20/6/1989. Accordingly, the said loan facility was made available to defendant 1. A receipt for the amount of the said loan dated 20/6/1989 is tendered in the court and it is marked as **Ex-1**. To secure the repayment of the said loan, defendant 1 hypothecated to the plaintiff the said New Tata LPT 1210 by way of first charge in favour of the plaintiff. A letter of hypothecation of the said vehicle dated 20/6/1989 whereby defendant 1 covenated with the plaintiff to repay the said loan of Rs.3,75,000/- with interest thereon, costs, charges and other expenses payable thereunder by monthly instalments of Rs.7,500/-, is on record and marked as **Ex-2**. It is the case of the plaintiff that defendants 2 to 4 executed in favour of the plaintiff a letter of guarantee dated 20/6/1989 whereby defendants 2 to 4 guaranteed payment by defendant 1 to the plaintiff of all

the amounts of the said loan of Rs.3,75,000/ and all interest, costs, charges and expenses chargeable by the plaintiff in respect of the said loan. Defendants 2 to 4 further agreed that the amount thereby guaranteed shall be due and payable by them to the plaintiff two days after demand and without demur merely upon the plaintiff sending to them a demand notice requiring the payment of the amount. A copy of the said letter of guarantee dated 20/6/1989 is tendered in the court and is marked as **Ex-3**.

6. The plaintiffs' case further is that a loan account was opened in the name of the said firm of defendant 1 i.e. M/s. Inland Transport in the books of the plaintiff and the amount of Rs.2,88,000/- on 20/6/1989 and the amount of Rs.87,000/- on 6/7/1989 aggregating to the said loan of Rs.3,75,000/- was granted to defendant 1 through the said loan account. It is the case of the plaintiff that the plaintiff has duly maintained in its books the said loan account. The plaintiff's case is that defendant 1 has failed and neglected to repay the said loan and interest thereon. Defendant 1,

however, on one hand and defendants 3 and 4 on the other hand executed in favour of the plaintiff on or about 31/3/1991 and 31/12/1993 Balance and Security Confirmation Letters separately whereby they confirmed the amount then due under the said loan account and acknowledged their indebtedness in the said amount under the said loan account to the plaintiff and confirmed execution of documents in favour of the plaintiff for repayment thereof and defendant 1 also confirmed the plaintiff's charge on the said Tata Tanker. The said Balance and Security Confirmation Letter dated 31/3/1991 for Rs.3,20,164/- signed by defendant 1 in favour of the plaintiff, the Balance and Security Confirmation Letter dated 31/3/1991 for Rs.3,20,164/- signed by defendants 3 and 4 in favour of the plaintiff and two Balance and Security Confirmation Letters both dated 31/12/1993 for Rs.2,28,543/- signed by defendant 1 on one hand and defendants 3 and 4 on the other hand executed in favour of the plaintiff are on record and are marked **Ex-4**, **Ex-5** and **Ex-6(Colly.)** respectively. The statement of loan account of

of defendant 1 maintained by the plaintiff-bank for the relevant period is on record and are marked **Ex-7**.

7. Thus, it is the case of the plaintiff that defendant 1 has failed and neglected to pay the amount due under the said loan account despite repeated requests and demands made by the plaintiff. The plaintiff ultimately by its letter dated 8/3/1995 called upon the defendants to pay to the plaintiff the amount then due under the said loan account and interest thereon. A copy of the said notice is annexed to the plaint and is marked as Ex-H. According to the plaintiff, the defendants received the said notice of demand but failed to make payment. In the circumstances, it is the case of the plaintiff that there is now due and payable by the defendants jointly and severally to the plaintiff a sum of Rs.4,18,933/- under the said loan account on the date of institution of the suit as per particulars of claim annexed and marked as Ex-I to the plaint with further interest at 17.5% per annum with quarterly rests from the date of the suit till payment and/or realisation.

8. It is stated by Mr. Thakar in his affidavit of evidence that the Court Receiver by order dated 25/9/1997 passed in Notice of Motion No.99 of 1997 was directed to implement the order dated 6/1/1997 in respect of the hypothecated vehicle Tata Tanker and take possession of the same and deposit the sale proceeds with the plaintiff. The Court Receiver pursuant to the said order has taken possession of the said vehicle. Admittedly, the plaintiff has received the highest offer dated 19/4/1999 for Rs.70,000/- from one M/s. Bharat Scrap carrying on business at Shop No.3, Survey No.317, LBS Marg, Kurla, Mumbai – 400 070.

9. The Court Receiver by Judges' Order dated 28/4/1999 was directed to accept the said offer and complete the sale of the suit vehicle to the said M/s. Bharat Scrap and pay the net sale proceeds to the plaintiff towards the suit claim after deducting his costs, charges and expenses. After the sale is completed, the Court Receiver was discharged without passing accounts. Admittedly, the Court Receiver has

delivered possession of the said vehicle to said M/s. Bharat Scrap on 10/5/1999. The plaintiff has annexed true copies of the documents and statement of the said loan account, to the plaint. The plaintiff has admitted that the plaintiff has received Rs.66,954/- being the net sale proceeds of the said Tata Tanker in September, 1999.

10. The defendants have been served. However, they are not contesting the suit. They have not filed written statement. Mr. Kehav Trivikram Thakar, the Chief Manager of the plaintiff is present in the court today. He has confirmed the contents of his affidavit in lieu of examination-in-chief and the relied upon documents. In the circumstances aforestated, having regard to the affidavit of evidence in lieu of examination-in-chief and the documents tendered in the court which have been exhibited by me, I am of the opinion that the plaintiff is entitled to a decree in terms of prayer clause (a) of the plaint subject to the modification in the rate of interest from the period from the date of the decree till realisation. Hence, the following

order :

11. The suit is decreed in terms of prayer clause (a) of the plaint subject to the modification that the plaintiff shall be entitled to interest at the rate of 12% per annum from the date of decree till payment. Needless to say that the amount of Rs.66,954/- which the plaintiff has already received being the sale proceeds of the suit vehicle will be adjusted while drawing up the decree. The suit is also decreed in terms of prayer clause (e) of the plaint. The suit is disposed of.

12. Refund of court fee if any as per rules.

13. Certified copy is expedited.

[SMT. RANJANA DESAI, J.]